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Minutes of the May 2, 3, & 4, 2005 Meeting of the Ohio State Board of Pharmacy

MONDAY, MAY 2, 2005

9:02 a.m. The State Board of Pharmacy convened in Presser Hall Auditorium on the campus of Ohio Northern University, Ada, Ohio with the following members present:

Lawrence J. Kost, R.Ph., *President*; Suzanne R. Eastman, R.Ph., *Vice-President*; Gregory Braylock, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Dorothy Teater, Public Member; and James Turner, R.Ph.

Also present were William T. Winsley, *Executive Director*; William McMillen, *Licensing Administrator*; Mark Keeley, *Legislative Affairs Administrator*; David Rowland, *Legal Affairs Administrator*; and Sally Ann Steuk, *Assistant Attorney General*.

The meeting began with the Board members introducing themselves to the students attending the meeting. President Kost and Mr. Winsley then discussed the purposes and functions of the Board with the students.

Mr. McMillen discussed his Licensing Report with the Board and the students.

President Kost and Mr. Winsley gave the students an overview of the Board's Investigation and Hearing process so they would have an understanding of the day's activities.

Mr. Keeley then discussed his Legislative Report with the Board and the students.

10:15 a.m. The Board took a brief recess.

10:38 a.m. The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with Ohio Revised Code Chapters 119. and 4729. in the matter of Chester Lee Parker, R.Ph., Westerville.

11:51 a.m. The hearing ended and the record was closed. The Board recessed for lunch.

1:01 p.m. The State Board of Pharmacy reconvened in Presser Hall Auditorium on the campus of Ohio Northern University, Ada, Ohio with the following board members attending:

Lawrence J. Kost, R.Ph., *President*; Suzanne R. Eastman, R.Ph., *Vice-President*; Gregory Braylock, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Dorothy Teater, Public Member; and James Turner, R.Ph.

1:03 p.m. The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of conducting an adjudication hearing in accordance with Ohio Revised Code Chapters 119. and 4729. in the matter of Neil D. Frasca, R.Ph., Youngstown.

4:57 p.m. The hearing ended and the record closed. The meeting was recessed until May 3, 2005.

TUESDAY, MAY 3, 2005

8:32 a.m. The Ohio State Board of Pharmacy convened in Room East B, 31st Floor, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Lawrence J. Kost, R.Ph., *President*; Suzanne R. Eastman, R.Ph., *Vice-President*; Gregory Braylock, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Dorothy Teater, Public Member; and James Turner, R.Ph.

After a discussion of the draft minutes from the April 12-13, 2005 meeting, Mrs. Gregg moved that the minutes be approved as amended. The motion was seconded by Mrs. Teater and approved by the Board: Aye – 8.

Mr. Winsley reported on the current status of the FY06-07 Budget process, including a discussion of his testimony before the Senate Finance Committee on April 19, 2005.

8:45 a.m. The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of creating a record in accordance with Ohio Revised Code Chapters 119. and 4729. in the matter of Eugene K. Park R.Ph., Lewis Center.

9:03 a.m. The record was closed. The Board took a brief recess.

9:16 a.m. The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with Ohio Revised Code Chapters 119. and 4729. in the matter of Warren H. Hone, R.Ph., Hillsboro.

11:45 a.m. The hearing was recessed for lunch.

1:00 p.m. The State Board of Pharmacy reconvened in Room East B, 31st Floor of the Vern Riffe Center, 77 South High Street, Columbus, Ohio, with all members present, to continue the hearing in the matter of Warren H. Hone, R.Ph., Hillsboro.

1:30 p.m. Mr. Winsley met with the candidates for licensure by reciprocity in Room South-A, 31st Floor of the Vern Riffe Center.

The candidates for licensure by reciprocity introduced themselves, and then participated in a discussion of pharmacy laws and rules with Mr. Winsley. They were then presented their pharmacist identification cards.

Sherri Dawn Adams	03-2-26655	West Virginia
Joseph Ben-Ari	03-2-26693	Maryland
Bessem Ndip Enoh	03-2-26709	Massachusetts
Priti-Ranparia Jain	03-2-26677	Pennsylvania
Michel Stephen Mikula	03-2-26694	West Virginia
Mary Susan Miller	03-2-26629	Pennsylvania
David P. Murray	03-2-26658	Indiana
Maria Laura Seta	03-2-26653	Michigan
Hope T. Tran	03-2-26620	Pennsylvania
Catherine Bernadette Willmore	03-2-26644	Connecticut

3:00 p.m. The hearing in the matter of Warren H. Hone, R.Ph., ended and the record was closed. The Board took a brief recess.

3:15 p.m. The Board was joined by Assistant Attorney General Sally Ann Steuk to conduct an adjudication hearing in accordance with Ohio Revised Code Chapters 119. and 4729. in the matter of Craig James Bryant, R.Ph., Rootstown.

3:58 p.m. The hearing ended and the record was closed.

- 4:00 p.m. Mr. Mitchell moved that the Board go into Executive Session to investigate complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Revised Code. The motion was seconded by Mr. Braylock and a roll-call vote was conducted by President Kost as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Teater – yes; and Turner – yes.
- 5:20 p.m. The Executive Session ended and the meeting was opened to the public. Mr. Braylock moved that the Board adopt the following order in the matter of Craig James Bryant, R.Ph.:

R-2005-175

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number: D-040802-006

in the matter of:

CRAIG JAMES BRYANT, R.Ph.

3844 Sanford Road
Rootstown, Ohio 44272

R.Ph. Number 03-2-21372

INTRODUCTION

The matter of Craig James Bryant came for hearing on May 3, 2005, before the Board: Lawrence J. Kost, R.Ph., (*presiding*); Suzanne R. Eastman, R.Ph.; Gregory Braylock, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Dorothy Teater, Public Member; and James Turner, R.Ph.

Craig James Bryant was represented by Mary Barley-McBride. The State of Ohio was represented by Assistant Attorney General Sally Ann Steuk.

SUMMARY OF EVIDENCE

State's Witness: Frank Bodi, Ohio State Board of Pharmacy

Respondent's Witness: Craig James Bryant, R.Ph., Respondent

State's Exhibits:

1. Summary Suspension Order/Notice of Opportunity For Hearing letter [08-02-04]
- 1A-1E. Procedurals
2. State Board of Pharmacy Order In Re Craig James Bryant [10-03-95]
3. Ohio State Highway Patrol Initial Incident Report No. 04-000183-0467 [07-08-04]
4. Lakeview Health Systems Certificate of Completion for Craig Bryant [05-31-04}

Respondent's Exhibits:

- A. Journal Entry, State of Ohio vs. Craig J. Bryant, Case No. R04TRC9528-5, Portage County Municipal Court [04-26-05]; Judgment Entry/Sentencing (OVI) [04-26-05]; Ohio State Highway Patrol Citation No. T553165 [07-08-04]; Journal Entry [date illegible]; Complaint [08-17-04]
- B. PRO Pharmacist's Recovery Contract for Craig J. Bryant [04-06-05]
- C. Edwin Shaw Hospital for Rehabilitation Certificate of Achievement for Craig Bryant [04-08-05]

- D. Copy of "7th Annual Conference on Chemical Dependency in the Profession of Pharmacy" Program [05-01-05]; Continuing Pharmaceutical Education Certificate [05-01-05]

FINDINGS OF FACT

After having heard the testimony, observed the demeanor of the witnesses, considered the evidence, and weighed the credibility of each, the State Board of Pharmacy finds the following to be fact:

- (1) Records of the Board of Pharmacy indicate that Craig James Bryant was originally licensed by the State of Ohio as a pharmacist on February 26, 1996, pursuant to examination, and is currently licensed to practice pharmacy in the State of Ohio. Records further reflect that Craig James Bryant was previously disciplined by the Board on September 21, 1995.
- (2) Craig James Bryant is impaired physically or mentally to such a degree as to render him unfit to practice pharmacy within the meaning of Section 4729.16 of the Ohio Revised Code, to wit: on or about July 8, 2004, Craig James Bryant was arrested for driving under the influence of drugs. Craig James Bryant failed field sobriety tests; Craig James Bryant indicated to the arresting officer that he was taking medication; and, Craig James Bryant indicated to the officer that he had just gotten out of drug rehab and that he had a substance abuse problem. Craig James Bryant was found to possess 12 tablets of hydrocodone w/acetaminophen, a Schedule III Controlled Substance, and 4 tablets of Soma, a dangerous drug. Craig James Bryant informed the transporting deputy that he had consumed 10 pills prior to being stopped. Craig James Bryant also told a Board Agent that he was currently enrolled in his second rehab treatment center for chemical dependency.
- (3) Craig James Bryant did, on or about July 8, 2004, knowingly possess a controlled substance when the conduct was not in accordance with Chapters 3719., 4729., and 4731. of the Ohio Revised Code, to wit: Craig James Bryant possessed 12 tablets of hydrocodone w/acetaminophen, a Schedule III Controlled Substance, outside the confines of a pharmacy, without a valid prescription, and for his personal abuse. Such conduct is in violation of Section 2925.11 of the Ohio Revised Code.
- (4) Craig James Bryant did, on or about July 8, 2004, possess a dangerous drug when the conduct was not in accordance with Chapters 4729., and 4731. of the Ohio Revised Code, to wit: Craig James Bryant possessed 4 tablets of Soma outside the confines of a pharmacy, without a valid prescription, and for his personal abuse. Such conduct is in violation of Section 4729.51(C)(3) of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (3) and (4) of the Findings of Fact constitute being guilty of gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) The State Board of Pharmacy concludes that paragraphs (3) and (4) of the Findings of Fact constitute being guilty of unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Revised Code.
- (3) The State Board of Pharmacy concludes that paragraphs (2) through (4) of the Findings of Fact constitute being addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to

practice pharmacy as provided in Division (A)(3) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 3719.121 of the Ohio Revised Code, the State Board of Pharmacy hereby removes the Summary Suspension Order issued to Craig James Bryant on August 2, 2004.

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby suspends indefinitely the pharmacist identification card, No. 03-2-21372, held by Craig James Bryant and such suspension is effective as of the date of the mailing of this Order.

- (A) Craig James Bryant, pursuant to Rule 4729-9-01(F) of the Ohio Administrative Code, may not be employed by or work in a facility licensed by the State Board of Pharmacy to possess or distribute dangerous drugs during such period of suspension.
- (B) Craig James Bryant, pursuant to Section 4729.16(B) of the Ohio Revised Code, must return his identification card and license (wall certificate) to the office of the State Board of Pharmacy within ten days after receipt of this Order unless the Board office is already in possession of both. The identification card and wall certificate should be sent by certified mail, return receipt requested.

Further, after one year from the effective date of this Order, the Board will consider any petition filed by Craig James Bryant for a hearing, pursuant to Ohio Revised Code Chapter 119., for reinstatement. The Board will only consider reinstatement of the license to practice pharmacy in Ohio if the following conditions have been met:

- (A) Craig James Bryant must enter into a new contract, signed within thirty days after the effective date of this Order, with an Ohio Department of Alcohol and Drug Addiction Services (ODADAS) approved treatment provider or a treatment provider acceptable to the Board for a period of not less than five years and, upon signing, submit a copy of the contract to the Board office. The contract must provide that:
 - (1) Random, observed urine drug screens shall be conducted at least once each month.
 - (a) The urine sample must be given within twelve hours of notification. The urine drug screen must include testing for creatinine or specific gravity of the sample as the dilutional standard.
 - (b) Carisoprodol and hydrocodone must be included in the standard urine drug screen.
 - (c) Results of all drug screens must be negative. Refusal of a drug screen or a diluted drug screen is equivalent to a positive result. Any positive results, including those which may have resulted from ingestion of food, but excluding false positives which resulted from medication legitimately prescribed, indicates a violation of the contract.
 - (2) Attendance is required, minimum of three times per week, at an Alcoholics Anonymous, Narcotics Anonymous, and/or similar support group meeting.

- (3) The program shall immediately report to the Board any violations of the contract and/or lack of cooperation.
- (B) Craig James Bryant must demonstrate satisfactory proof to the Board that he is no longer addicted to or abusing drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy.
- (C) Craig James Bryant must provide, at the reinstatement petition hearing, documentation of the following:
- (1) Compliance with the contract required above (e.g.-proof of giving the sample within twelve hours of notification and copies of all drug screen reports, meeting attendance records, treatment program reports, etc.);
 - (2) Compliance with the continuing pharmacy education requirements set forth in Chapter 4729-7 of the Ohio Administrative Code as applicable and in effect on the date of petitioning the Board for reinstatement;
 - (3) Compliance with the terms of this Order.
- (D) If reinstatement is not accomplished within three years of the effective date of this Order, Craig James Bryant must also show successful completion of the NAPLEX examination or an equivalent examination approved by the Board.
- (E) Upon such time as the Board may consider reinstatement, Respondent will be afforded a Chapter 119. hearing. At such time, the Board may consider reinstatement with or without restrictions and/or conditions as the Board deems appropriate under the circumstances.

The motion was seconded by Ms. Eastman and approved by the Board: Aye – 8.

Mr. Mitchell then moved the Board adopt the following order in the matter of Warren H. Hone, R.Ph.:

R-2005-176

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number: D-041008-028

in the matter of:

WARREN H. HONE, R.PH.

1347 Northwoods Drive
Hillsboro, Ohio 45133

R.Ph. Number 03-2-08034

INTRODUCTION

The matter of Warren H. Hone came for hearing on May 3, 2005, before the following members of the Board: Lawrence J. Kost, R.Ph., (*presiding*); Suzanne R. Eastman, R.Ph.; Gregory Braylock, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Dorothy Teater, Public Member; and James Turner, R.Ph.

Warren H. Hone was represented by Elizabeth Y. Collis. The State of Ohio was represented by Assistant Attorney General Sally Ann Steuk.

SUMMARY OF EVIDENCE

State's Witness: Ann Abele, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses: Warren H. Hone, R.Ph., Respondent
Roberta Schrenk

State's Exhibits:

1. Notice of Opportunity For Hearing letter [10-08-04]
1A-1D. Procedurals
2. Rx #6866290 [06-16-03]
3. Summary of Dispensing Report for Rx #6866290 [06-16-03 to 10-27-03]
4. Four stock bottles of Rx #6866290 [08-19-03]; one vial of Rx #6866290 [10-24-03]; two vials of Rx #6866290 [10-27-03]
5. Dispensing Report for Pancrease MT 10, Lipram-CR 10 & Creon 10 at Hillsboro K-Mart [06-03 to 12-03]
6. Kmart Pharmacy #4964 Medical Expenses Report [01-01-03 to 12-31-03]
7. The Children's Medical Center Pulmonary Clinic Sick Call Record [11-21-03]
8. Notarized Statement of Robert Fink, M.D. with attachments [01-08-04]
9. Dangerous Drug Distributor Inspection Report of Kmart Pharmacy #4964 [01-12-04]
10. Four computer screen printouts for Rx #6866290 [07-09-03 to 10-24-03]
11. Four page Daily Audit Listing report of Kmart Pharmacy #4964 [07-09-03]
- 11A. Daily Audit Listing report of Kmart Pharmacy #4964 [08-19-03]
- 11B. Four page Daily Audit Listing report of Kmart Pharmacy #4964 [09-22-03]
- 11C. Three page Comprehensive Audit Listing report of Kmart Pharmacy #4964 [10-24-03]
- 11D. Five page Daily Audit Listing report of Kmart Pharmacy #4964 [10-27-03]
12. Notarized Statement of Warren H. Hone, R.Ph. [01-12-04]
13. Five Notarized Statements of John Brauner [02-06-04]; Larry A. Miller [01-19-04]; Matthew Bremer [01-28-04]; Jerry Fraley, R.Ph. [01-26-04]; Hai Nguyen [01-26-04]
14. Ohio Attorney General's Medicaid Fraud Control Unit Report #01, Docket No. M2030547 [12-02-03]
15. Ohio Attorney General's Medicaid Fraud Control Unit Report #02, Docket No. M2030547 [12-04-03]
16. Notarized Statement of Jessica Cramton [01-06-04]
17. Three page Drug Movement Report of Kmart Pharmacy #4964 [01-12-04]
18. E-Mail letter from Ann Abele [01-20-04]; Purchase Report of Kmart Pharmacy #4964 for Lipram CR10; Pancrease MT 10 and Creon 10 [06-06-03 to 12-11-03]
19. Two page Kmart Pharmacy Rx Partial Fill Log [08-14-03 to 10-29-03]
20. Two computer screen printouts showing history of Rx #6866290 [06-16-03 to 10-27-03]
21. Reversal of 10-24-03 Billing [10-27-03]
22. Three page Drug Fact and Comparisons for Digestive Enzymes [November 2002]
23. Hand-written note on computer screen printout [01-13-04]
24. Four page Transaction List Detail Reports of Kmart Pharmacy #4964 for Rx #6866290 [06-16-03 to 10-24-03]
25. Five page Daily Audit Listing Reports of Kmart Pharmacy #4964 [06-16-03]
26. Handwritten Notes on Pricing/Product Comparison [not dated]

Respondent's Exhibits:

- A. Reprinted Label for Rx #6866290 [07-09-03]
- B. Reprinted Label for Rx #6866290 [08-19-03]
- C. Reprinted Label for Rx #6866290 [09-22-03]
- D. Reprinted Label for Rx #6866290 [10-24-03]
- E. Reprinted Label for Rx #6866290 [10-27-03]
- F. Notarized Statement of Pat Maher, R.Ph. [04-26-05]

FINDINGS OF FACT

After having heard the testimony, observed the demeanor of the witnesses, considered the evidence, and weighed the credibility of each, the State Board of Pharmacy finds the following to be fact:

- (1) Records of the State Board of Pharmacy indicate that Warren H. Hone was originally licensed by the State of Ohio on August 19, 1963, pursuant to examination, and is currently licensed to practice pharmacy in Ohio. Records further reflect during the relevant time periods stated herein, Warren H. Hone was the Responsible Pharmacist at Kmart Pharmacy #4964, 1249 North High Street, Hillsboro, Ohio, pursuant to Sections 4729.27 and 4729.55 of the Ohio Revised Code and Rule 4729-5-11 of the Ohio Administrative Code.
- (2) Warren H. Hone did, on or about July 9, 2003, and on subsequent refill dates, misbrand a drug, to wit: when dispensing prescription number 6866290, Warren H. Hone dispensed Lipram-CR 10, but falsely labeled the vial as Pancrease MT 10. Further, Warren H. Hone billed Medicaid for a drug which was not dispensed. Such conduct is in violation of Section 3715.52 of the Ohio Revised Code.
- (3) Warren H. Hone did, on or about July 9, 2003, and on subsequent refill dates, substitute a drug despite the prescriber's designation on the prescription as "DAW," and the drug Warren H. Hone substituted was not generically equivalent, to wit: when dispensing prescription number 6866290, Warren H. Hone substituted Lipram-CR 10 for Pancrease MT 10, though the prescriber indicated that the prescription was to be dispensed as written. Further, the drug Warren H. Hone substituted is not generically equivalent to the drug prescribed. Such conduct is in violation of Section 4729.38 of the Ohio Revised Code.
- (4) Warren H. Hone did, on or about October 27, 2003, and dates preceding, when utilizing a computerized recordkeeping system at K-Mart Pharmacy, fail to keep refill records which included positive identification of the dispensing pharmacist(s) and accurate refill dispensing records, to wit: the recordkeeping system allowed for false dispensing entries; failed to keep record of actual dates of dispensing; failed to keep record of positive identification of the dispensing pharmacist(s) or patient counseling; and failed to keep accurate records of generic dispensing. Such conduct is in violation of Rule 4729-5-27 of the Ohio Administrative Code.
- (5) Warren H. Hone did, on or about the following dates, when utilizing a computerized recordkeeping system at K-Mart Pharmacy, fail to keep records dispensing, to wit: the system failed to document accurate and correct refill information as follows:

<u>Violation</u>	<u>Date</u>
Utilized a stamped signature	06-16-03
	07-09-03
	09-22-03
	10-27-03
No pharmacist signature	10-24-03

Such conduct is in violation of Rule 4729-5-28(C) of the Ohio Administrative Code.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (2) through (5) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.
- (2) The State Board of Pharmacy concludes that paragraphs (2) through (5) of the Findings of Fact constitute being guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of provisions of Chapter 3715. or 4729. of the Revised Code or any rule adopted by the Board as provided in Division (A)(5) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby adjudicates the matter of Warren H. Hone as follows:

- (A) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes on Warren H. Hone a monetary penalty of one thousand three hundred and fifty dollars (\$1,350.00) due and owing on or before July 9, 2005. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.

Further, the State Board of Pharmacy stipulates that:

- (B) Warren H. Hone must obtain, within ninety days from the effective date of this Order, three hours of continuing pharmacy education (0.3 CEUs) on Bioequivalency and three hours of continuing pharmacy education (0.3 CEUs) on Therapeutic Substitution, which may not also be used for license renewal.
- (C) Warren H. Hone must attend, within ninety days from the effective date of this Order, a Reciprocity hearing conducted by the Ohio State Board of Pharmacy.
- (D) The State Board of Pharmacy hereby declares that, for one year from the effective date of this Order, Warren H. Hone's pharmacist identification card is not in good standing and thereby denies the privilege of being a preceptor and training pharmacy interns pursuant to paragraph (D)(1) of Rule 4729-3-01 of the Ohio Administrative Code.
- (E) Warren H. Hone may not, for one year from the effective date of this Order, serve as a responsible pharmacist.
- (F) Warren H. Hone may not, for one year from the effective date of this Order, work in a pharmacy more than 50 hours per week.
- (G) Warren H. Hone must not violate the drug laws of Ohio, any other state, or the federal government.
- (H) Warren H. Hone must abide by the rules of the State Board of Pharmacy.
- (I) Warren H. Hone must comply with the terms of this Order.

The motion was seconded by Mrs. Teater and approved by the Board: Aye – 5/Nay – 2/Abstain – 1(Turner).

Mr. Mitchell then moved that the Board adopt the following order in the matter of Eugene K. Park, R.Ph.:

R-2005-177

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number: D-050310-048

in the matter of:

EUGENE K. PARK, R.Ph.

2494 Tucker Trail

Lewis Center, Ohio 43035

R.Ph. Number 03-1-24338

INTRODUCTION

The matter of Eugene K. Park came for consideration on May 3, 2005, before the following members of the Board: Lawrence J. Kost, R.Ph., (*presiding*); Suzanne R. Eastman, R.Ph.; Gregory Braylock, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Dorothy Teater, Public Member; and James Turner, R.Ph.

Eugene K. Park was not present nor was he represented by counsel. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness: Christopher K. Reed, Ohio State Board of Pharmacy

Respondent's Witnesses: None

State's Exhibits:

1. Notice of Opportunity For Hearing letter [03-10-05]
- 1A-1B. Procedurals
2. Complaint, State of Ohio vs. Eugene K Park, Case No. 03-CR-B-01101, Delaware County Municipal Court [06-16-03]
3. Waiver of Rights with Plea [06-23-03]
4. Judgment Entry [06-23-03]
5. Notarized Statement of Eugene K. Park [02-10-04]
6. Notarized Statement of Kristin A. Straub [09-02-04]

Respondent's Exhibits: None

FINDINGS OF FACT

After having heard the testimony, observed the demeanor of the witness, considered the evidence, and weighed the credibility of each, the State Board of Pharmacy finds the following to be fact:

- (1) On March 10, 2005, Eugene K. Park was notified by letter of his right to a hearing, his rights in such hearing, and his right to submit any contentions in writing.

- (2) As demonstrated by return receipt dated March 16, 2005, Eugene K. Park received the letter of March 10, 2005, informing him of the allegations against him and his rights.
- (3) Eugene K. Park has not requested a hearing in response to the letter of March 10, 2005, therefore the matter was referred to the Board for consideration.
- (4) Records of the State Board of Pharmacy indicate that Eugene K. Park was originally licensed by the State of Ohio as a pharmacist on April 6, 2001, pursuant to examination, and is currently licensed to practice pharmacy in Ohio.
- (5) Eugene K. Park was, on or about June 23, 2003, convicted of Theft, a misdemeanor of the first degree under Section 2913.02(A)(3) of the Ohio Revised Code, State of Ohio vs. Eugene K. Park, Case No. 03-CR-B-01101, Delaware County Municipal Court. Eugene K. Park was caught stealing baseball cards valued at \$86.32, when he emptied a box of cereal in Meijer and placed the cards inside the box and tried to exit the store. Such conviction and conduct constitutes being guilty of gross immorality within the meaning of Section 4729.16(A)(1) of the Ohio Revised Code.
- (6) Eugene K. Park did, on or about various dates in 2003 and 2004, engage in a pattern of unprofessional conduct while practicing pharmacy, to wit: numerous complaints were made to Eugene K. Park's employer, Rite Aid, referring to Eugene K. Park's breathing heavily while talking on the telephone with patients and prescribers' agents, and attempting to kiss the hands of female patients who came into the pharmacy to pick up prescriptions. While doing this, Eugene K. Park would continually ask the prescribers' agents personal questions as to their marital and/or family status, and he would ask them to go on dates with him. One prescriber's office refused to phone prescriptions to Eugene K. Park's pharmacy due to his behavior. Such conduct constitutes being guilty of gross immorality within the meaning of Section 4729.16(A)(1) of the Ohio Revised Code.

CONCLUSIONS OF LAW

- (1) The State Board of Pharmacy concludes that paragraphs (5) and (6) of the Findings of Fact constitute being guilty of gross immorality as provided in Division (A)(1) of Section 4729.16 of the Ohio Revised Code.
- (2) The State Board of Pharmacy concludes that paragraphs (5) and (6) of the Findings of Fact constitute being guilty of dishonesty and unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy adjudicates the matter of Eugene K. Park as follows.

- (A) Based on the foregoing Findings of Fact and Conclusions of Law, the State Board of Pharmacy hereby reprimands Eugene K. Park for his conduct in this matter.
- (B) On the basis of the Findings of Fact and Conclusions of Law set forth above, the State Board of Pharmacy hereby imposes on Eugene K. Park a monetary penalty of one thousand dollars (\$1,000.00) due and owing within thirty days

of the issuance of this Order. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.

The motion was seconded by Mrs. Gregg and approved by the Board: *Aye – 5/Nay – 3.*

Mr. Braylock then moved that the Board adopt the following order in the matter of Neil D. Frasca R.Ph.:

R-2005-178

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number: D-041008-034

in the matter of:

NEIL D. FRASCA, R.Ph.

2613 Birchwood Drive
Youngstown, Ohio 44515

R.Ph. Number 03-1-08449

INTRODUCTION

The matter of Neil D. Frasca came for hearing on May 2, 2005, before the following members of the Board :Lawrence J. Kost, R.Ph., (*presiding*); Suzanne R. Eastman, R.Ph.; Gregory Braylock, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Dorothy Teater, Public Member; and James Turner, R.Ph.

Neil D. Frasca was represented by David W. Grauer. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness: Joanne Predina, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses: Paul Witkowski, M.S., R.Ph.
Neil D. Frasca, R.Ph., Respondent

State's Exhibits:

1. Notice of Opportunity For Hearing letter [10-08-04]
1A-1F. Procedurals
2. Tod Children's Hospital Neonatal Parenteral Nutrition Orders for bag No. 2 [03-06-04]
3. Baxa Micro Macro Compounder MixCheck (tm) Report [03-06-04]
4. Copy of Compounded Label from TPN Bag Serial No. 000933 [03-06-04]
5. ARUP Laboratories Report for I.D. #(11339)00-000-2984 [03-06-04]
6. ARUP Laboratories Report for I.D. #(11339)00-000-2962 [03-06-04]
7. TPN Error Report from Pharmacy Director Hugh Owen [05-11-04]
8. Notarized Statement of Neil D. Frasca [05-11-04]
9. Tod Children's Hospital Neonatal Parenteral Nutrition Orders for bag No. 61 [03-06-04]
- 9A. Tod Children's Hospital Neonatal Parenteral Nutritional faxed Orders for bag No. 61 [03-06-04]
10. Baxa MicroMacro Compounder MixCheck (tm) Report [03-06-04]
11. Copy of Compounded Label from TPN Bag Serial No. 000937 [03-06-04]
12. ARUP Laboratories Report for I.D. #(11339)00-000-2985 [03-06-04]

Respondent's Exhibits:

- A. Biography of Paul Witkowski, Pharm.D. [04-28-05]
- B. Copy of letter, with attachments from David W. Grauer to William T. Winsley [03-07-05]
- C. Resume of Neil D. Frasca [04-25-05]
- D. Forum Health Job Description for Lead Pharmacist [Revised December 2000, December 2003]; Performance Appraisal of Neil Frasca [06-11-04]; Performance Appraisal for Neil Frasca [04-14-05]
- E. Letter from Daniel Testa, R.Ph. [11-16-04]

FINDINGS OF FACT

After having heard the testimony, observed the demeanor of the witnesses, considered the evidence, and weighed the credibility of each, the State Board of Pharmacy finds the following to be fact:

- (1) Records of the State Board of Pharmacy indicate that Neil D. Frasca was originally licensed by the State of Ohio as a pharmacist on August 16, 1965, pursuant to examination, and is currently licensed to practice pharmacy in Ohio.
- (2) Neil D. Frasca did, on or about March 6, 2004, misbrand a drug, to wit: when Neil D. Frasca received an order for a TPN (total parenteral nutrition) preparation which was to contain Zantac, he dispensed a preparation containing insulin instead, which had not been prescribed by the physician. The patient, a baby girl, was subsequently harmed. The Board further finds that the testimony of Paul Witkowski, a witness called by the Respondent, was not entirely believed. Mr. Kwiatkowski's expertise in the field is not recognized to be above that of this Board. Mr. Witkowski's testimony was in part comprised of speculation, and he himself recognized this fact. The preparation did not contain a drug that it should have, and it also contained a drug it should not have contained. As such, the preparation was misbranded. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.
- (3) Neil D. Frasca did, on or about March 6, 2004, misbrand a drug, to wit: when Neil D. Frasca received an order for a TPN (total parenteral nutrition) preparation which was to contain heparin, he dispensed a preparation containing insulin instead, which had not been prescribed by the physician. The patient, a baby boy, was subsequently harmed. As above, the Board further finds that the testimony of Paul Witkowski, a witness called by the Respondent, was not entirely believed. Mr. Witkowski's expertise in the field is not recognized to be above that of this Board. Mr. Witkowski's testimony was in part comprised of speculation, and he himself recognized this fact. The preparation did not contain a drug that it should have, and it also contained a drug it should not have contained. As such, the preparation was misbranded. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

CONCLUSIONS OF LAW

The State Board of Pharmacy concludes that paragraphs (2) and (3) of the Findings of Fact constitute being guilty of unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy adjudicates the matter of Neil D. Frasca as follows:

- (A) On the basis of the Findings of Fact and Conclusion of Law set forth above, the State Board of Pharmacy hereby imposes on Neil D. Frasca a monetary penalty of five hundred dollars (\$500.00) due and owing within thirty days of the issuance of this Order. The monetary penalty should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.
- (B) Neil D. Frasca must obtain, within one hundred-eighty days from the effective date of this Order, three hours of continuing pharmacy education (0.3 CEUs) in Aseptic Techniques and three hours of continuing pharmacy education (0.3 CEUs) in Medication Errors, which may not also be used for license renewal.

The motion was seconded by Mrs. Gregg and approved by the Board: *Aye* – 8.

Mr. Giacalone then moved that the Board adopt the following order in the matter of Chester Lee Parker, R.Ph.:

R-2005-179

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number: D-041008-029

in the matter of:

CHESTER LEE PARKER, R.PH.

818 Water Lane
Westerville, Ohio 43081

R.Ph. Number 03-2-24947

INTRODUCTION

The matter of Chester Lee Parker came for hearing on May 2, 2005, Before the following members of the Board: Lawrence J. Kost, R.Ph., (*presiding*); Suzanne R. Eastman, R.Ph.; Gregory Braylock, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Dorothy Teater, Public Member; and James Turner, R.Ph.

Chester Lee Parker was represented by David W. Grauer. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness: Todd Zevchik, R.Ph., Ohio State Board of Pharmacy

Respondent's Witness: Chester Lee Parker, R.Ph., Respondent

State's Exhibits:

1. Notice of Opportunity For Hearing letter [10-08-04]
- 1A. Amendment Notice letter [10-13-04]
- 1B-1E. Procedurals
2. State Board of Pharmacy Settlement Agreement In Re Chester Lee Parker, R.Ph. [02-04-03]
3. Rx #510249 [02-13-04]

4. CVS Pharmacy #5436 Patient Prescription Record [12-01-03 to 03-29-04]
5. CVS Pharmacy #5436 Prescription Register report [02-13-04]
6. Reprinted Label for Rx #510249 [02-13-04]; CVS /pharmacy Customer Receipt for Rx #510249 [02-13-04]
7. CVS Pharmacy Prescription Pick-Up Log [02-10-04 to 02-13-04]

Respondent's Exhibits:

- A-C. Three letters of Support [04-25-05 to 04-27-05]
- D. Professional Summary of Chester L. Parker [04-26-05]
- E. Statement of John R. Anderson [03-03-05]
- F. Letter from David W. Grauer to William T. Winsley [12-31-02]

FINDINGS OF FACT

After having heard the testimony, observed the demeanor of the witnesses, considered the evidence, and weighed the credibility of each, the State Board of Pharmacy finds the following to be fact:

- (1) Records of the State Board of Pharmacy indicate that Chester Lee Parker was originally licensed as a pharmacist in the State of Ohio on September 18, 2001, pursuant to reciprocity, and is currently licensed to practice pharmacy in Ohio. Records further reflect that Chester Lee Parker was previously disciplined by the Board on February 4, 2003.
- (2) Chester Lee Parker did, on or about February 13, 2004, misbrand a drug, to wit: when Chester Lee Parker received a prescription for Topamax 25 mg, Rx #510249, he dispensed Toprol XL 25 mg, which had not been prescribed by the physician. The patient subsequently experienced seizures. Such conduct is in violation of Section 3715.52(A)(2) of the Ohio Revised Code.

CONCLUSIONS OF LAW

The State Board of Pharmacy concludes that paragraph (2) of the Findings of Fact constitutes being guilty of unprofessional conduct in the practice of pharmacy as provided in Division (A)(2) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby imposes a monetary penalty of one hundred dollars (\$100.00) on Chester Lee Parker and payment of the monetary penalty is due and owing within thirty days of the mailing of this Order. The remittance should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, Room 1702, Columbus, Ohio 43215-6126.

The motion was seconded by Mr. Turner and approved by the Board: *Aye – 5 /Nay – 4.*

R-2005-180 Mr. Winsley presented a request for an exemption to Rule 4729-5-11 (Responsible person) requesting that **Hugh Owen**, R.Ph., be permitted to be the Responsible Pharmacist on a temporary basis for the following Terminal Distributor of Dangerous Drugs licenses:

Forum Health/North side Medical (02-1150900)
Forum Health/Begley Medical Park (02-1164900)

After discussion, Mr. Braylock moved that the Board approve this request for three months. The motion was seconded by Mrs. Gregg and approved by the Board: *Aye – 8.*

R-2005-181 The Board next considered a request for an exemption from Rule 4729-5-10 (Prescription pick-up station) received from the following sites:

Teregen Laboratories (02-1235150)
Various Physician Office contained in the letter of request

After discussion, Mr. Turner moved that the Board approve the request as long as the parties to the request comply with the requirements in the rule for such an exemption. The motion was seconded by Mrs. Teater and approved by the Board: *Aye – 8.*

After a discussion of the need to continue to provide a Board member to serve on the Nursing Board's Committee on Prescriptive Governance (CPG), President Kost appointed Mr. Braylock to continue as the Board's representative. President Kost also appointed Mr. Mitchell to serve as the alternate representative.

Mr. Mitchell discussed his participation as a member of the ACPE accreditation team to the University of Toledo. There was no action required by the Board.

5:48 p.m. The meeting was recessed until Wednesday, May 4, 2005.

WEDNESDAY, MAY 4, 2005

8:20 a.m. The State Board of Pharmacy convened in Room East B, 31st Floor, Vern Riffe Center for Government and the Arts, 77 South High Street, Columbus, Ohio with the following members present:

Lawrence J. Kost, R.Ph., *President*; Suzanne R. Eastman, R.Ph., *Vice-President*; Gregory Braylock, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth I. Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Dorothy Teater, Public Member; and James Turner, R.Ph.

8:30 a.m. The Board was joined by representatives of the **ddn Corporation** to present their Automated Product Machine (APM) concept to the Board.

10:10 a.m. The meeting with the representatives from the ddn Corporation ended. The Board took a brief recess.

10:15 a.m. The Board was joined by Assistant Attorney General Sally Ann Steuk for the purpose of creating a record in accordance with Ohio Revised Code Chapters 119. and 4729. in the matter of Maria C. Damato, R.Ph., Ellwood City, PA.

10:34 a.m. The record was closed.

Mr. Braylock reported that there had been no meeting of the Nursing Board's Committee on Prescriptive Governance (CPG) since the last report.

Mr. Winsley announced that the following settlement agreement with Stephen O. Daley, R.Ph., had been signed by all parties and was now effective:

R-2005-182

SETTLEMENT AGREEMENT WITH THE STATE BOARD OF PHARMACY

Docket Number D-041214-039

in the matter of:

STEPHEN O. DALEY, R.Ph.
2131 Denise Drive N.E.
New Philadelphia, Ohio 44663

R.Ph. Number 03-1-12190

This Settlement Agreement is entered into by and between Stephen O. Daley and the Ohio State Board of Pharmacy, a state agency charged with enforcing the Pharmacy Practice Act and Dangerous Drug Distribution Act, Chapter 4729. of the Ohio Revised Code.

Stephen O. Daley voluntarily enters into this Agreement being fully informed of his rights afforded under Chapter 119. of the Ohio Revised Code, including the right to representation by counsel, the right to a formal adjudication hearing on the issues contained herein, and the right to appeal. Stephen O. Daley acknowledges that by entering into this agreement he has waived his rights under Chapter 119. of the Revised Code.

Whereas, the Board is empowered by Section 4729.16 of the Ohio Revised Code to suspend, revoke, place on probation, refuse to grant or renew an identification card or enforce a monetary penalty on the license holder for violation of any of the enumerated grounds therein.

Whereas, Stephen O. Daley is licensed to practice pharmacy in the State of Ohio.

Whereas, on or about December 14, 2004, pursuant to Chapter 119. of the Ohio Revised Code, Stephen O. Daley was notified of the allegations or charges against him, his right to a hearing, his rights in such hearing, and his right to submit contentions in writing. Stephen O. Daley requested a hearing; it was scheduled. The December 14, 2004, Notice of Opportunity for Hearing contains the following allegations or charges:

- (1) Records of the State Board of Pharmacy indicate that Stephen O. Daley was originally licensed by the State of Ohio as a pharmacist on August 10, 1977, pursuant to examination, and is currently licensed to practice pharmacy in Ohio.
- (2) Stephen O. Daley did, on or about July 18, 1996, knowingly make a false statement with purpose to secure the issuance of a license or registration, to wit: Stephen O. Daley indicated on his pharmacist license renewal application, September 15, 1996 to September 15, 1997, that he had not been charged with a crime when in fact he had been charged with, and subsequently convicted of, Soliciting for Prostitution in violation of Section 2907.24 of the Ohio Revised Code. State of Ohio vs. Stephen O. Daley, Case No. 95-CRB-03274, Canton Municipal Court. These facts came to light during an unrelated investigation by a Board agent in 2004. Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.

Stephen O. Daley neither admits nor denies the allegations stated in the Notice of Opportunity for Hearing letter dated December 14, 2004; however, the Board has evidence sufficient to sustain the allegations and hereby adjudicates the same.

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of a formal hearing at this time, Stephen O. Daley knowingly and voluntarily agrees with the State Board of Pharmacy to the following:

- (A) Stephen O. Daley agrees to the imposition of a monetary penalty of one thousand dollars (\$1,000.00), due and owing within thirty (30) days from the effective date of this Agreement. Checks should be made payable to the "Treasurer, State of Ohio" and mailed with the enclosed form to the State Board of Pharmacy, 77 South High Street, 17th Floor, Columbus, Ohio 43215-6126.

If, in the judgment of the Board, Stephen O. Daley appears to have violated or breached any terms or conditions of this Agreement, the Ohio State Board of Pharmacy reserves the right to, at any time, revoke probation, modify the conditions of probation, and reduce or extend the period of probation, and/or the Board may institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violation of the laws of Ohio occurring before the effective date of this Agreement.

Stephen O. Daley acknowledges that he has had an opportunity to ask questions concerning the terms of this agreement and that all questions asked have been answered in a satisfactory manner. Any action initiated by the Board based on alleged violation of this Agreement shall comply with the Administrative Procedure Act, Chapter 119. of the Ohio Revised Code.

Stephen O. Daley waives any and all claims or causes of action he may have against the State of Ohio or the Board, and members, officers, employees, and/or agents of either, arising out of matters which are the subject of this Agreement. Stephen O. Daley waives any rights of appeal pursuant to Chapter 119. of the Ohio Revised Code.

This Settlement Agreement shall be considered a public record, as that term is used in Section 149.43 of the Ohio Revised Code, and shall become effective upon the date of the Board President's signature below.

<u>/s/</u> Stephen O. Daley, R.Ph., Respondent	<u>/d/</u> 04/25/05 Date Signed
<u>/s/</u> James Lindon, Esq., Attorney for Respondent	<u>/d/</u> 05/06/05 Date Signed
<u>/s/</u> Suzanne R. Eastman, President, Ohio State Board of Pharmacy	<u>/d/</u> 05/04/05 Date Signed
<u>/s/</u> Sally Ann Steuk, Ohio Assistant Attorney General	<u>/d/</u> 05/04/05 Date Signed

Mr. Benedict reported that there had been no meeting of the Medical Board's Prescribing Committee.

10:38 a.m. Mr. Mitchell moved that the Board go into Executive Session to investigate complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the Revised Code and for the purpose of conferring with an attorney for the Board regarding pending or imminent court action pursuant to Section 121.22(G)(3) of the Revised Code. The motion was seconded by Mrs. Gregg and a roll-call vote was conducted by President Kost as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Teater – yes; and Turner – yes.

12:30 p.m. The Executive Session ended and the meeting was opened to the public. Mr. Mitchell moved that the Board adopt the following order in the matter of Maria C. Damato, R.Ph.:

R-2005-183

ORDER OF THE STATE BOARD OF PHARMACY

Docket Number: D-050311-051

in the matter of:

MARIA C. DAMATO, R.Ph.
616 Meadowridge Drive
Ellwood City, Pennsylvania 16117

R.Ph. Number 03-3-23981

INTRODUCTION

The matter of Maria C. Damato came for hearing on May 4, 2005, before the following members of the Board: Lawrence J. Kost, R.Ph., (*presiding*); Suzanne R. Eastman, R.Ph.; Gregory Braylock, R.Ph.; Robert P. Giacalone, R.Ph.; Elizabeth Gregg, R.Ph.; Nathan S. Lipsyc, R.Ph.; Kevin J. Mitchell, R.Ph.; Dorothy Teater, Public Member; and James Turner, R.Ph.

Maria C. Damato was not present nor was she represented by counsel. The State of Ohio was represented by Sally Ann Steuk, Assistant Attorney General.

SUMMARY OF EVIDENCE

State's Witness: William McMillen, R.Ph., Ohio State Board of Pharmacy

Respondent's Witnesses: None

State's Exhibits:

1. Notice of Opportunity For Hearing letter [03-11-05]
- 1A. Procedural
2. Renewal Application for Pharmacist License of Maria C. Damato [08-07-04]
3. Pennsylvania Department of State Bureau of Professional and Occupational Affairs License Verification for Maria C. Damato [06-17-04]
4. Letter to George Pavlich from Maria C. Damato [09-16-04]
5. Pennsylvania State Board of Pharmacy CE Audit (RP036922L) letter In Re Maria C. Damato [02-10-03]
6. Response letter to Pennsylvania State Board of Pharmacy from Maria C. Damato [09-26-03]
7. Notice, Commonwealth of Pennsylvania Bureau of Professional and Occupational Affairs vs. Maria C. Damato, Docket Number 0344-54-04, File No. 03-54-13782; Order to Show Cause; Certificate of Service [03-03-04]

Respondent's Exhibits: None

FINDINGS OF FACT

After having heard the testimony, observed the demeanor of the witness, considered the evidence, and weighed the credibility of each, the State Board of Pharmacy finds the following to be fact:

- (1) On March 11, 2005, Maria C. Damato was notified by letter of her right to a hearing, her rights in such hearing, and her right to submit any contentions in writing.
- (2) As demonstrated by return receipt dated March 16, 2005, Maria C. Damato received the letter of March 11, 2005, informing her of the allegations against her and her rights.

- (3) Maria C. Damato has not responded in any manner to the letter of March 11, 2005, and has not requested a hearing in this matter, therefore the matter was referred to the Board for consideration.
- (4) Records of the State Board of Pharmacy indicate that Maria C. Damato was originally licensed by the State of Ohio as a pharmacist on February 8, 2000, pursuant to reciprocity, and is currently licensed to practice pharmacy in Ohio.
- (5) Maria C. Damato did, on or about August 7, 2004, knowingly make a false statement with purpose to secure the issuance of a license or registration, to wit: Maria C. Damato indicated on her pharmacist license renewal application that she had not been the subject of disciplinary action by any state or federal agency when in fact she had been formally admonished by the Pennsylvania Board of Pharmacy. In fact, the Pennsylvania Board Order, dated March 3, 2004, indicated that it was a "disciplinary action." Such conduct is in violation of Section 2921.13 of the Ohio Revised Code.

CONCLUSION OF LAW

The State Board of Pharmacy concludes that paragraph (5) of the Findings of Fact constitutes being guilty of misrepresentation in applying for or securing a license or identification card issued by the board as provided in Division (A)(10) of Section 4729.16 of the Ohio Revised Code.

DECISION OF THE BOARD

Pursuant to Section 4729.16 of the Ohio Revised Code, and after consideration of the record as a whole, the State Board of Pharmacy hereby notes the disciplinary action of the Pennsylvania Board of Pharmacy in the matter of Maria C. Damato.

The motion was seconded by Mr. Braylock and approved by the Board: *Aye* – 8.

R-2005-184 Mrs. Eastman then moved that the Board deny the request received from **Donald Sutton** through his attorney that he be reinstated to the practice of pharmacy upon complying with certain terms and conditions. The motion was seconded by Mrs. Gregg and approved by the Board: *Aye* – 8.

R-2005-185 After a discussion of the **ddn Corporation's** APM product, Mr. Mitchell moved that the Board find this concept to be approvable pending final inspection of the installed product under the following conditions:

1. The machine is to be accessible only when the pharmacy department is open for business.
2. Access to the machine by both staff and patients must be in compliance with the Board's definition of positive identification (4729-5-01(N) OAC).
3. Controlled substances may be included in the medications in the machine.
4. The system may be used for both new and refill prescriptions.
5. The system must be physically attached to the Pharmacy Department with access only from inside the business.
6. The system must comply with all of the Board's recordkeeping requirements.
7. The offer to counsel must occur after the patient selects the products to be obtained.

The motion was seconded by Mr. Braylock and approved by the Board: *Aye* – 8.

1:00 p.m. Mr. Turner moved that the Board go into Executive Session for the purpose of the investigation of complaints regarding licensees and registrants pursuant to Section 121.22(G)(1) of the

Revised Code. The motion was seconded by Mrs. Teater and a roll-call vote was conducted by President Kost as follows: Braylock – yes; Eastman – yes; Giacalone – yes; Gregg – yes; Lipsyc – yes; Mitchell – yes; Teater – yes; and Turner – yes.

1:21 p.m. The Executive Session ended and the meeting was opened to the public.

1:22 p.m. Mrs. Gregg moved that the Board receive Per Diem as follows:

<u>PER DIEM</u>	<u>4/21</u>	<u>5/2</u>	<u>5/3</u>	<u>5/4</u>	<u>Total</u>
Braylock	-	1	1	1	3
Eastman	-	1	1	1	3
Giacalone	1	1	1	1	4
Gregg	1	1	1	1	4
Kost	-	1	1	1	3
Lipsyc	-	1	1	1	3
Mitchell	-	1	1	1	3
Teater	-	1	1	1	3
Turner	-	1	1	1	3

The motion was seconded by Mr. Lipsyc and approved by the Board: Aye – 8.

1:23 p.m. Mr. Turner moved that the meeting be adjourned. The motion was seconded by Mr. Lipsyc and approved by the Board: Aye – 8.

<p style="text-align: center;">THE OHIO STATE BOARD OF PHARMACY APPROVED THESE MINUTES JUNE 8, 2005</p>
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